

10/02/2007

Horniak, Robert



TOWN OF RICO

A Colorado Home Rule Municipality
Incorporated 1879
Elevation 8,825

1765096 - R8 SDMS

7
OCT 10 P 3:05
DEPT. OF JUSTICE - ENRP
ENVIRONMENT DIVISION

Congressman John Salazar
813 Main Avenue, Suite 300
Durango, CO. 81301

Cc: Assistant Attorney General
Environmental and Natural Resource Division
P.O. Box 7611
U.S. Department of Justice
Washington, D.C. 2004-7611

RE: United States and State of Colorado v. Rico Development Corporation, Janice Graham, Independent
Executor of the Estate of Wayne Webster, and Gary M. Sell, Personal Representative of the Estate of Virginia
Sell, D.J.
Ref DJ#90-5-1-1-06498

10.02.2007

Congressman John Salazar

The following is a cumulative effort on the Town of Rico's part to solicit and utilize funds that have been held by the United States and State of Colorado in both the Wayne Webster and Virginia Sell Estates for several years. The Town of Rico is interested in acquiring access to these funds to aid in the environmental improvement of areas in and around of Rico, some of which include property held by both these entities.

This is a follow up letter to a letter submitted by the Town of Rico on September 24, 2003. A public comment letter was also submitted by the Town of Rico in accordance with Sheldon Muller, Enforcement Attorney for the United States Environmental Protection Agency, receiving from the Department of Justice the extension of two weeks for the Town of Rico to make comment by June 12, 2003 (please see attached). It has now been four years since the initial comments were made by the Town of Rico. In an effort to revisit the funds of \$110,000.00 for the Estate of Virginia Sell and \$180,000.00 for the Estate of Wayne Webster in the Consent Decrees, the Town of Rico is submitting this letter to you today.

In both the letter issued July 23, 2003 and September 24, 2003, the Town of Rico articulated some interests concerning properties within the Virginia Sell and Wayne Webster Estates, and those payment amounts. At the outset, it is worth taking a moment to brief you on efforts made on behalf of the Town of Rico, without the assistance of these funding amounts, to be a responsible partner in the future of these properties.

The interest of the Town of Rico is still that ownership of these areas, where remediation activities can or should take place, be held by a long-term responsible entity to avoid further illegal land activity, and aid in successful permit compliance and property management. To aid in meeting this task, the Town of Rico has engaged in a long-term partnership with Atlantic Richfield CO., and Rico Renaissance to form a not-for-profit entity known as North Rico Inc. The sole purpose of North Rico Inc. is to purchase properties of this sort to enable permitting activity, property management and remediation efforts to be maintained by a responsible long-term entity. North Rico Inc. has board members that consist of all three members, Atlantic Richfield CO., Rico Renaissance and The Town of Rico.

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CORR

90-5-1-1-06498

The Town of Rico currently provides staff support without funding assistance to this organization through the involvement of the Town Manager, Town staff, and the representation of one Rico resident as Secretary of the organization.

North Rico Inc. has filed for federal not-for-profit status and carries officer insurance, has adopted by-laws, and holds documented meetings. The development of this partnership entity will enable any future sales of remaining properties owned by the Wayne Webster and Virginia Sell Estates to be set aside in "good Samaritan" ownership, as well as provide for the possible development of a special account monitored by North Rico Inc. with participation and guidance from the Town of Rico for the specific purpose of dealing with hazardous substances and properties identified in the Voluntary Clean Up plan.

Additionally in both the July and September 2003 letters, it was, and still is desired that accurate mapping of the Rico area with regard to all properties owned by the Estates of Wayne Webster and Virginia Sell occur.

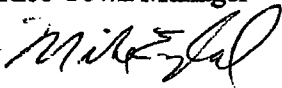
Funding from the Wayne Webster and Virginia Sell Estates would not only aid the Town of Rico in having an accurate map of properties, but would also aid the Town of Rico in addressing a responsible approach to the issue of discharge and discharge permitting around the St. Louis Tunnel, and property surrounding, which has proven to be a chronic contributor to degraded water quality within the Rico watershed area. The Town of Rico in turn would be able to provide a reasonable structure and timeframe for a due public process for review of these properties.

The Town of Rico also took the initiative to develop a continued watershed study and restoration program with focus on those watershed areas affected by the properties owned by the Estates of Wayne Webster and Virginia Sell. The estate payments could aid the Town of Rico in building on the recently completed 2006 East Fork of the Dolores River Watershed Study. The study articulates next steps in watershed coordination and programming. The study is available in its entirety for view on the Town of Rico website www.ricocolorado.org under the link *Town Hall*.

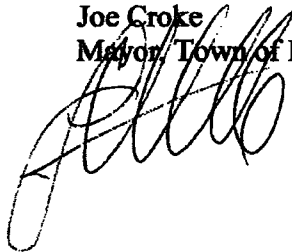
The Town of Rico through cooperative participation in the Voluntary Clean Up Application to the State of Colorado, with Atlantic Richfield CO., and commitment of Town staff to participation on the North Rico Inc. non-profit organization shows that the Town of Rico is interested in taking a responsible role along with Rico Renaissance, Atlantic Richfield CO., the State of Colorado, and the Federal government in dealing with the property ownership issues surrounding the Wayne Webster and Virginia Sell Estates. It only seems appropriate that the Town of Rico be able to use the funds from Webster and Sell Estates to aid in meeting these challenges. Use of these funds will provide the Town of Rico adequate financial support in pursuing adequate restrictions and remediation efforts particularly in the St. Louis Tunnel/ settling pond area, and Rico Argentine mill site/ tailings pile area through the "good Samaritan" organization North Rico Inc.

Again, the Town of Rico requests your feedback, advocacy and support with regard to these estates and looks forward to hearing from you on the issue.

Sincerely,
Mike England
Rico Town Manager



Joe Croke
Mayor, Town of Rico



ENV_ENFORCEMENT-n1048864-v1

Document Name TOWN OF RICO

Author Homiak, Robert

Document Type Letter

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Co-Council

Co-Council LSA(s)

Distribution List Thomas, Janine (ENRD);Davis, Buffy (ENRD);Davis, Joe (ENRD);Fenlon-Gore, Peggy (ENRD);West, Cora (ENRD);Rose, Robert (ENRD);Lattin, Sue (ENRD); Bezio, James (ENRD)

Fileroom EES - 6th Floor

DJ# 90-5-1-1-06498

Case Name U.S. AND THE STATE OF COLORADO V. RICO DEVELOPMENT CORPORATION, WAYNE WEBSTER & VIRGINIA SELL

Court CO D. Colo.; 10th Cir.

Notes THIS DOCUMENT CONTAINS 2 BLANK PAGES.

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Received Date 10/10/2007

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ERIC JAMES HEIL, ESQ.

9-24-03

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Environmental and Natural Resources Division
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U.S. Department of Justice
Washington, D.C. 2004-7611

RE: United States and State of Colorado v. Rico Development Corporation, Janice Graham, Independent Executor of the Estate of Wayne Webster, and Gary M. Sell, Personal Representative of the Estate of Virginia Sell, D.J. Ref DJ #90-5-1-1-06498.

To Whom it May Concern,

I represent the Town of Rico, a Colorado municipal corporation. This letter is a follow-up to the public comment letter previously submitted, dated 7-23-03, and this letter responds to conversations yesterday with Sheldon Muller and Richard Munson.

Regarding property ownership, yesterday I received a list of mining claim owned by the Estate of Wayne Webster. No map has yet been presented indicating the location of the mining claims. The previous public comment letter submitted on behalf of the Town suggested that a detailed map should be considered showing all property interests owned by Rico Development Corporation, and the Estates of Wayne Webster and Virginia Sell. I hereby re-emphasize the importance of preparing a comprehensive list of properties and a detailed map as well as allowing a reasonable timeframe for public review of such maps prior to finalizing any Consent Decree. Meaningful public understanding and review of the Consent Decree demands public disclosure of the current land ownership of the Estates of Wayne Webster and Virginia Sell.

Several comments were made yesterday in my conversations with Sheldon Muller and Richard Munson which must be confronted to avoid confusion. First, the Town of Rico does not now, never has, and never will, desire to take title to any of the contaminated properties owned by the Estates of Wayne Webster and Virginia Sell. The interest of the Town has always been, and continues to be, that ownership of areas where remediation activities take place should be held by a responsible long-term entity to avoid the failure in permit compliance and proper property management that has occurred continuously for more than 10 years.

Second, the Town of Rico is not seeking to "condemn" any property. It is becoming clear that the Estate of Wayne Webster desires a Consent Decree that would release some 130 acres of land holdings in the Rico area which could be sold in the future. The Town has previously commented that the payment amounts in the proposed Consent Decrees are substantially insufficient considering the land sales of Rico Development Corporation from the late 1980's through 1996. The Estate of Wayne Webster and Virginia Sell should not be allowed to profit further from additional land sales if the proposed payment amounts in the Consent Decree are approved.

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Supplemental Public Comment Letter

9-24-03

Webster/Sell Consent Decrees D.J. Ref DJ #90-5-1-1-06498

The Town has requested information concerning sales of property by Rico Development Corporation as well as property transfers to relatives of the officers of Rico Development Corporation. Far too little attention and investigation has been given to the history of land conveyances surrounding the Rico Development Corporation ownership of the former Atlantic Richfield Company land holdings. The proposed payment amount appears to reward the deliberate practice of Rico Development Corporation to avoid the responsibilities of the discharge permit for the St. Louis Tunnel while liquidating land assets through sales to third parties and conveyances to relatives of the officers of the corporation. Approving a Consent Decree that would allow further land sales would add insult to public injury.

The importance of understanding property ownership issues can not be underestimated. At this time, there is no reason for the Town to believe that any responsible attention is being given to property ownership and the practicalities of implementing a long term remediation solution. As a case in point, attached to this letter is a recently passed Resolution by the Dolores County Commissioners canceling a tax sale of the Martha Lode, *the site where the St. Tunnel adit discharge and planned new treatment plant is located*. I recently discovered that tax liens were sold for the Martha Lode nearly three years ago and that the title was about to be transferred by statutory law. After explaining the nature of the Martha Lode to the Dolores County Treasurer she brought the matter to the attention of the Dolores County Commissioners and they took action to cancel the tax sale.

This situation clearly resulted from the fact that no party is taking any responsibility for the property ownership issues, including Rico Renaissance, Atlantic Richfield Corporation, the State of Colorado or the Federal government. This situation has also occurred despite the fact that I specifically raised the issue of the clouded title of the Martha Lode several years ago to all parties which resulted from a transfer of the Martha Lode from Rico Development Corporation to Rico Renaissance, then the subsequent and questions "correction deed" that attempted to transfer the property back to Rico Development Corporation in 1998 when Rico Development Corporation had already been administratively dissolved. Due to the "correction deed", the Dolores County Assessor and Treasurer listed the property as owned by Rico Development Corporation, then sold the tax liens when no one paid the taxes on this parcel.

In addition to the recently averted title conveyance of the Martha Lode by tax sale, home sites have been sold in questionable land areas, such as around the Van Winkle headframe which contains waste rock with high lead content. Some of the home sites and land conveyances have involved illegal subdivision of property where no review occurred by the Town or County as required by state statute. Again, the importance of property ownership and identification can not be underestimated nor should the potential be underestimated for land speculation without understanding or appreciation of environmental issues.

On behalf of the Town of Rico I reiterate at this time that the proposed Consent Decrees with the Estates of Wayne Webster and Virginia Sell are premature and, if approved in the current form, would have great potential to cause injury to the public.

Supplemental Public Comment Letter

9-24-03

Webster/Sell Consent Decrees D.J. Ref DJ #90-5-1-1-06498

The following suggested modifications to the Consent Decrees are proposed:

1. Accurate identification of properties owned by the Estates of Wayne Webster and Virginia Sell, including maps that describe their locations, should be provided as previously requested. A reasonable timeframe for public review of such information should be afforded.
2. The Consent Decrees should include a condition that the proceeds from any future sales of remaining properties owned by the Estates of Wayne Webster and Virginia Sell should be remitted to the Rico-Argentine Special Account within the EPA Hazardous Substance Superfund to be used for such purposes as contemplated in the Consent Decree.
3. The Consent Decree should incorporate adequate restrictions on properties where foreseeable remediation has been identified, such as the St. Louis tunnel/settling pond area and the Rico Argentine mill site/tailings pile area.
4. If the Estate of Wayne Webster desires to transfer certain properties to a more appropriate entity for remediation activities then I suggest that because no "good Samaritan" non-profit entity exists at this time to hold such properties, Atlantic Richfield Company, Rico Renaissance, Rico Properties, or the U.S. Forest Service be considered as appropriate entities to assume ownership of these parcels.

Sincerely,

Eric James Heil

Cc: Sheldon Muller, Enforcement Attorney, EPA, VIA Fax: (303) 312-6953
Tony Trumbly, Colorado Attorney General's office, VIA Fax: (303) 866-3558
Richard A. Munson, Estate of Wayne Webster, VIA Fax: (303) 792-5048
Ramon Escure, Rico Renaissance/Rico Properties, VIA Fax: (970) 728-5194
Mark Walker, CDOPHE, VIA Fax: (303) 759-5355
Janice Sheftel, Dolores Water Conservancy District, VIA Fax: (970) 247-8827

ERIC JAMES HEIL, ESQ.

7-23-03

Assistant Attorney General
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Washington, D.C. 2004-7611

RE: United States and State of Colorado v. Rico Development Corporation, Janice Graham, Independent Executor of the Estate of Wayne Webster, and Gary M. Sell, Personal Representative of the Estate of Virginia Sell, D.J. Ref DJ #90-5-1-1-06498.

To Whom it May Concern,

I represent the Town of Rico, a Colorado municipal corporation. The Board of Trustees of the Town of Rico has reviewed the proposed Consent Decrees with Rico Development Corporation and the estates of Wayne Webster and Virginia Sell (collectively referred to as the "Consent Decrees") and has taken action to approve submitting public comments on behalf of the Rico community. These public comments are submitted for both consent decrees. The Town of Rico is referred to as the "Town" in these comments. Atlantic Richfield Company is referred to as "ARCO".

Public Comments Submitted Timely: The 30 day public comment period was published in the Federal Register on June 12th, 2003. The initial 30 day period expired on July 12th, 2003. The Town of Rico requested a 30 day extension to submit public comments. Correspondence from Sheldon Muller, Enforcement Attorney for the United States Environmental Protection Agency, dated July 1st, 2003, indicated that the Department of Justice has authorized an extension of two weeks for a total of forty-four days from June 12th, 2003, to submit comments. These comments are submitted timely.

Payment Amounts: The consent decree with the estate of Wayne Webster proposes a payment amount of \$180,000.00 and the consent decree with the estate of Virginia Sell proposes a payment amount of \$110,000.00. No payment amount is proposed from Rico Development Corporation and no other payment amount is proposed in either consent decree.

The Town believes the proposed payment amounts are substantially insufficient. Upon information and belief, Rico Development Corporation purchased the Anaconda/ARCO land holdings in the mid-1980's for \$1,000,000.00 (one million dollars). From the mid-1980's to the period of 1994 to 1996 Rico Development Corporation subdivided a portion of the land holdings (the "Atlantic Cable Subdivision"), sold numerous residential properties, conveyed numerous properties to relatives of the officers of Rico Development Corporation, then sold the majority of the remaining land holding to Rico Properties/Rico Renaissance for approximately \$3,500,000.00.

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The Town has previously requested information and disclosure of the chain of transactions from the Rico Argentine Mining Company to Anaconda to ARCO to Rico Development Corporation to Rico Properties to Rico Renaissance and other related parties. The Town has also previously requested information and disclosure of the properties owned by heirs and relatives of Wayne Webster, David Sell and Virginia Sell. No information has been provided and upon information and belief the Plaintiff has not attempted to determine such information.

Without the information regarding Rico Development Corporation's conveyance of lands to relatives and related parties, the sales of residences and subdivided lots, and the disposition of proceeds from the sale of the Rico Development Corporation land holdings to Rico Properties, it appears that the Payment amounts actually reward the Defendants for on-going willful violations of the Federal Water Pollution Control Act and Colorado Water Quality Control Act.

Use of Payment Amounts: Article VI Payment in the Consent Decrees sets forth payments amounts of \$110,000.00 for the Estate of Virginia Sell and \$180,000.00 for the Estate of Wayne Webster. The Consent Decrees states in paragraph 7:

"7. The total amount to be paid by Settling Defendant pursuant to Paragraph 5 shall be deposited by EPA in the Rico-Argentine Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response action at or in connection with the Site or to be transferred by EPA to the EPA Hazardous Substance Superfund."

This Paragraph 7 does not commit the Payments for use in the Rico area, but, as written, merely indicates that use of the Payments amounts for response activities in the Rico area is an option to be determined by the sole discretion of the EPA.

The Town of Rico hereby comments that any Payment amounts received from settlement and consent decrees related to water quality violations in the Rico area should be committed to response actions and other reclamation or natural aquatic habitat restoration activities in the Rico area.

Property Ownership: Article XIII Access of the Consent Decrees purport to establish continuing rights of access by the United States and State of Colorado for the purpose of conducting any response activity related to the Site. "Site" is defined in the Consent Decrees as:

Article IV. Definitions. 3. r. "Site" shall mean the complex of tunnels and other facilities at the Rico Argentine Mine, including, but not limited to, the St. Louis and Blaine Tunnels and any associated settling ponds and related facilities, located outside the Town of Rico, Dolores County, Colorado and including continuing, intermittent or new discharges from such areas, provided that Settling Defendant or the Heirs do nothing to initiate, increase or exacerbate the discharges."

The Town of Rico hereby comments that the description of "Site" is too vague to be meaningful and enforceable. Furthermore, the definition limits "Site" to areas outside of the Town of Rico; however, several remediated tailings pile sites that are identified as contributors to water quality degradation are located within the Town of Rico. While a comprehensive statement of the Defendant's agreeing to provide access to their properties is

Public Comment Letter

7-23-03

Webster/Sell Consent Decrees D.J. Ref DJ #90-5-1-1-06498

beneficial, a more detailed list of properties and maps are necessary to avoid confusion regarding which properties are included under this access provision. The Consent Decrees should not be considered for approval until a map of the Rico area is prepared that indicates all properties owned by the Estates of Wayne Webster and Virginia Sell.

Property Conveances: The Consent Decree with the Estate of Wayne Webster contains a provision in Paragraph 26. that requires the seller of any property subject to the Consent Decree to include a provision in any conveyance documents that is similar to the access rights in Paragraph 25. and to notify the United States and State within 10 days of transfer. No similar provision is included in the Consent Decree with the Estate of Virginia Sell.

The Town of Rico hereby comments that provisions regarding access for both Consent Decrees should be established in the form of an easement or restrictive covenant that is recorded in the Office of the County Clerk and Recorder to attach to the chain of title and that such access rights should burden and run with the land. Also, the Town comments that identification of the properties subject to this Consent Decree, by preparation of a map and a list of properties, should occur to avoid vagueness, ambiguity and confusion in the administration and enforcement of Consent Decree provisions concerning access to the "Site". Rico Development Corporation has conveyed illegally subdivided parcels in the past, both in the Town of Rico and outside the Town of Rico. Therefore, property identification and recording of documents against such properties to notifying buyers of access rights and conveyance notification requirements is essential to make this provision of the Consent Decrees meaningful.

Property Restrictions: The Consent Decrees do not specify any restrictions on the properties where access is given. Once identification of the properties is accomplished, appropriate restrictions should be established. Outside the boundaries of the Town of Rico, Dolores County has not adopted zoning regulations. Development of the properties subject to this Consent Decree could inhibit or frustrate response efforts in the future.

The Town of Rico hereby comments that appropriate restrictions should be established for the properties once all the properties are identified.

Settlement is Pre-Mature: The Town of Rico hereby comments that the proposed Consent Decrees are incomplete and pre-mature and urges the Court in *the strongest terms possible* to reject the Consent Decrees as submitted. The Town has significant concern that approving the Consent Decree in the form proposed may actually frustrate and inhibit the actual response activities being studied by other potential responsible parties because of the lack of identification of properties and lack of restriction on use and development of properties.

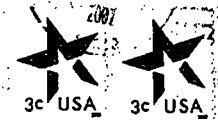
Sincerely,

Eric James Heil

Cc: Sheldon Muller, Enforcement Attorney, EPA

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FIRST CLASS



X-RAYED
OCT - 9 2007
DOJ MAIL ROOM
BY
TIME

Assistant Attorney General
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Washington, D.C. 2004-7611



Bezio, James (ENRD)

From: MAILROOM (ENRD)
Sent: Wednesday, October 10, 2007 2:31 PM
To: Bezio, James (ENRD); Davis, Buffy (ENRD); Davis, Joe (ENRD); Fenlon-Gore, Peggy (ENRD); Lattin, Sue (ENRD); Rose, Robert (ENRD); Thomas, Janine (ENRD); West, Cora (ENRD)
Subject: Mail Received Summary

Summary of Incoming Mail received 2007-10-10

You received mail for the following cases:

- Env Enforcement - 1048864 - TOWN OF RICO
 - o DJ#: 90-5-1-1-06498
 - o Case Name: U.S. AND THE STATE OF COLORADO V. RICO DEVELOPMENT CORPORATION, WAYNE WEBSTER & VIRGINIA SELL
 - o Document Type: Letter
 - o Description/Notes: THIS DOCUMENT CONTAINS 2 BLANK PAGES.

The document(s) were scanned to PDF file(s) and placed into Hummingbird DM.

The corresponding paper document(s) have been time/date stamped and forwarded, along with the envelope (s), to your section's designated file room. The document(s) will be added to the existing file(s) for this case. If you prefer some other organization for these file(s), please call your designated file room.